

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
VIRGINIA DRILLING COMPANY, LLC,

Plaintiff,

v.

JUSTICE LOW SEAM MINING, INC.,

Defendant.

FILED
CH
2018 MAY 25 P 2:19
CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT
CIVIL ACTION NO. 17-C-1130
Honorable Joanna I. Tabit

MOTION TO ENFORCE SETTLEMENT AGREEMENT

NOW COMES the Plaintiff, by counsel, and hereby moves this Court for an Order enforcing a settlement agreement reached between the parties hereto. For its grounds, Plaintiff states as follows:

1. That the instant civil action was filed on or about August 2, 2017.
2. Defendant was served and filed a Motion to Dismiss on or about September 14, 2017.
3. Thereafter, counsel for the Plaintiff and Defendant's in-house counsel, entered into negotiations with a settlement agreement reached in this civil action and other outstanding actions and accounts against the Justice Companies on or about September 28, 2017. This settlement agreement was confirmed by email from Dustin Deane, in-house counsel for the Justice Companies to his counsel and the undersigned on September 28, 2017. Defendant's counsel, Michael B. Hissam was advised of the settlement and he acknowledged the same by email. Copies of this email are attached hereto and marked as Exhibit 1.
4. Thereafter, after several emails going back and forth regarding the specific terms of the settlement, a Release and Settlement Agreement was prepared by the undersigned consistent with

the settlement agreement and was forwarded to Defendant's in-house counsel, Dustin Deane, for Defendant's approval and signature on January 10, 2018. A copy of the email forwarding the Settlement is attached hereto and marked as Exhibit 2.

5. Thereafter, the undersigned did not hear from Mr. Deane until February 22, 2018 when Mr. Dean announced that he was leaving the Justice Companies at the end of that week. Mr. Deane in his email did not object to the written Settlement Agreement but in fact suggested edits to the same to change the beginning of the payment dates and payment schedule. A copy of said email is attached hereto and marked as Exhibit 3.

6. The undersigned modified the Settlement Agreement to change the payment dates and forward the same to Defendant's in-house counsel, Steve Ball. The undersigned reached out to Mr. Ball by emailing on several occasions requesting execution of the Settlement Agreement as well as requesting the Defendant to begin payment under the Settlement Agreement. To date, there has been no response by Mr. Ball.

7. Thereafter, the undersigned reached out to counsel for Defendant, Michael Hissam, and was advised by Mr. Hissam that his and his firms representation of the Defendant had been terminated by the Defendant. A copy of said correspondence is attached hereto and marked as Exhibit 5.

8. To date, said Release and Settlement Agreement has not been executed by the Defendant; the Defendant has not made any payments towards the agreed to settlement; and that the undersigned has had no contact from Defendant's in-house counsel since February 22, 2018 despite the undersigned's efforts to contact in-house counsel to discuss the status of consummation of the Settlement Agreement.

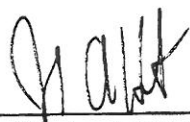
9. "The law favors and encourages the resolution of controversies by contracts of compromise and settlement rather than by litigation; and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy." Syl. Pt. 1, *Sanders v. Roselawn Memorial Gardens, Inc.*, 152 W.Va. 91, 159 S.E.2d 784 (1968); *see also Board of Educ. of Monongalia County v. Starcher*, 176 W.Va. 388, 343 S.E.2d 673 (1986); *Daily Gazette Co., Inc. v. Canady*, 175 W.Va. 249, 332 S.E.2d 262 (1985); *State ex rel. Vapor Corporation v. Narick*, 173 W.Va. 770, 320 S.E.2d 345 (1984).

10. "This Court has consistently held that a circuit court has the authority to enforce a settlement agreement through a party's motion to compel enforcement. As this Court found in *Moreland v. Suttmilller*, 183 W.Va. 621, 397 S.E.2d 910 (1990), where the underlying record provides sufficient evidence of intent to enter into settlement agreements and authorization to attorneys to do so, a court's decision to enforce the agreement will not be overturned. The *Moreland* Court explained as follows: 'On the whole, we believe that the evidence shows that settlement agreements were culminated between the appellants and both appellees: We base our conclusion in part on the Morelands' written and oral communications with their counsel and the court.'" *Id.* at 625, 397 S.E.2d at 914. *Horkulic v. Galloway*, 222 W. Va. 450, 459, 665 S.E.2d 284, 293 (2008).

Here, a settlement agreement was confirmed by Mr. Deane by email to his counsel on September 28, 2017. Mr. Deane furthered efforts upholding resolution of this matter in his email of November 1, 2017 whereby he requested a draft of the settlement agreement. See Exhibit 2. Finally, the mails show that it was still his intention to maintain this agreement when he requested changes to the dates of payments contemplated by the agreement without objection to the settlement or the written agreement itself. This was done in his email to the undersigned of February 22, 2018. It is

clear from the emails attached hereto, that there is sufficient evidence that a settlement agreement of this matter was reached by the parties and that it was the intention of the parties to settle this matter.

Therefore, Plaintiff requests from this Court an Order enforcing the parties' settlement agreement reached on September 28, 2017.



Josef A. Horter (WV Bar #1790)
BAILEY & WYANT, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
(304) 345-4222

**Virginia Drilling Company,
By Counsel,**

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2018 MAY 25 P 2:19

VIRGINIA DRILLING COMPANY, LLC,

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

Plaintiff,

v.

CIVIL ACTION NO. 17-C-1130
Honorable Joanna I. Tabit

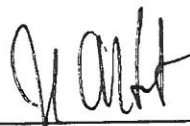
JUSTICE LOW SEAM MINING, INC.,

Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing "MOTION TO ENFORCE SETTLEMENT AGREEMENT" was served upon the following parties by U.S. Mail on this day, Thursday, May 25, 2018:

Michael B. Hissam
Rebecca D. Pomeroy
Bailey & Glasser LLP
209 Capitol Street
Charleston, WV 25301
Counsel for Justice Low Seam Mining, Inc.



Josef A. Horter (WV Bar #1790)
BAILEY & WYANT, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
(304) 345-4222

Horter, Josef

From: Michael B. Hissam <MHissam@baileyglasser.com>
Sent: Thursday, September 28, 2017 11:17 AM
To: Dustin Deane; Brian Glasser
Cc: Steve Ball; Horter, Josef; Becky Pomeroy
Subject: Re: Re Virginia Drilling matter

Sounds good, guys.

Thanks,
Mike

On 9/28/17, 11:13 AM, "Dustin Deane" <dustin.deane@bluestoneenergygroup.com> wrote:

Mike -

I wanted to bring you into the loop on this matter and report that we have reached an agreement in principle to resolve this matter with the Plaintiffs. I've copied their counsel Joe Horter to this email. Ive told Joe that we'd put off any pleading deadlines for him pending getting the settlement docs drafted and executed.

Thanks, Dustin

Dustin M. Deane
Associate General Counsel
James C. Justice Companies, Inc. and Affiliates

Michael B. Hissam :: Lawyer :: Bailey & Glasser LLP :: 304.345.6555

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Horter, Josef

From: Horter, Josef
Sent: Friday, January 26, 2018 1:51 PM
To: Dustin Deane
Subject: RE: Re Virginia Drilling matter

SentFromSession: HORTER-8200.jhorter.1/25/2018 8:59:02 AM

Dustin,

Have you had a chance to review the agreement? My client would like to get these payments underway. Thanks.

Joe

Josef A. Horter, Attorney
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
Charleston, WV 25301
T: 304.720.0737 | F: 304.343.3133

From: Dustin Deane [mailto:dustin.deane@bluestoneenergygroup.com]
Sent: Thursday, January 11, 2018 3:34 PM
To: Horter, Josef <jhorter@baileywyant.com>
Cc: Virlo Stiltner <Virlo@vadrillco.com>
Subject: RE: Re Virginia Drilling matter

Joe, thanks for the email. I will review and get back to you.

Regards, Dustin

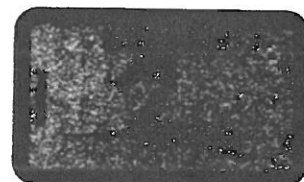
From: Horter, Josef [mailto:jhorter@baileywyant.com]
Sent: Wednesday, January 10, 2018 10:30 AM
To: Dustin Deane <dustin.deane@bluestoneenergygroup.com>
Cc: Virlo Stiltner <Virlo@vadrillco.com>
Subject: RE: Re Virginia Drilling matter

Dustin,

I hope you had a good holiday. Attached please find a proposed settlement agreement which includes an amortization table for the agreed to repayment. Please review and let me know if this is agreeable. I would like to get payments underway as soon as possible. Thanks.

Joe

Josef A. Horter, Attorney
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
Charleston, WV 25301
T: 304.720.0737 | F: 304.343.3133



Horter, Josef

From: Dustin Deane <dustin.deane@bluestoneenergygroup.com>
Sent: Wednesday, November 1, 2017 6:15 PM
To: Horter, Josef
Subject: FW: Re Virginia Drilling matter

Joe:

Just wanted to follow up with you regarding this matter. I believe where things left off you were going to make the first run at the settlement docs. Thanks, Dustin

From: Michael B. Hissam [mailto:MHissam@baileyglasser.com]
Sent: Thursday, September 28, 2017 11:17 AM
To: Dustin Deane <dustin.deane@bluestoneenergygroup.com>; Brian Glasser <BGlasser@baileyglasser.com>
Cc: Steve Ball <steve.ball@bluestoneindustries.com>; Josef Horter <jhorter@baileywyant.com>; Becky Pomeroy <bpomeroy@baileyglasser.com>
Subject: Re: Re Virginia Drilling matter

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Thanks, Dustin

Dustin M. Deane
Associate General Counsel
James C. Justice Companies, Inc. and Affiliates

Michael B. Hissam :: Lawyer :: Bailey & Glasser LLP :: 304.345.6555

Horter, Josef

From: Dustin Deane <dustin.deane@bluestoneenergygroup.com>
Sent: Thursday, February 22, 2018 2:57 PM
To: Horter, Josef
Cc: Steve Ball
Subject: RE: Re Virginia Drilling matter
Attachments: VADCO-Justice Agreement-163347.pdf; AMORTIZATION SCHEDULE FOR SETTLEMENT PAYMENT(2).pdf

Joe:

Thanks for your email. In a bit of personal news, I will actually be leaving the Justice companies at the end of this week to accept a position with another organization. I have copied my colleague Steve Ball to this email. Steve is our GC and will be able to take this settlement across the finish line. With regard to the document, we'll need to update section 1 to reflect a new payment schedule. I'll leave it to you and Steve to work out the specifics, but I would suggest simply moving everything back two months and having the first payment start on March 15th. We'll also need a new AM schedule. I also had a question with regard to Paragraph #3 as it seems to only release the Justice Companies for balances through March 31, 2017. Is there a specific reason for this cutoff (i.e., is there alleged to be a balance owed for the period after that date that is not intended to be released? If so, please advise us of it as we'd like to get everything resolved globally).

Thanks for your patience regarding this matter. I've enjoyed working with you and wish you the best going forward.

Regards, Dustin

Dustin M. Deane

Associate General Counsel

James C. Justice Companies, Inc. and affiliates

302 S. Jefferson Street | Roanoke, VA 24011

Phone: 540-776-7890 | Fax: 540-301-5919 | E-mail: dustin.deane@justicecorporation.com

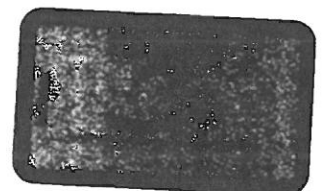
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From: Horter, Josef [<mailto:jhorter@baileywyant.com>]
Sent: Thursday, February 22, 2018 2:11 PM
To: Dustin Deane <dustin.deane@bluestoneenergygroup.com>
Subject: RE: Re Virginia Drilling matter

Dustin,



It's been some time since I sent the proposed agreement to you. Please have it signed and returned to me. Thanks.

Joe

Josef A. Horter, Attorney
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
Charleston, WV 25301
T: 304.720.0737 | F: 304.343.3133

From: Dustin Deane [mailto:dustin.deane@bluestoneenergygroup.com]
Sent: Monday, January 29, 2018 3:52 PM
To: Horter, Josef <jhorter@baileywyant.com>
Subject: RE: Re Virginia Drilling matter

Josey, sorry no I haven't had a chance to yet. I will review them and get back to you this week.

Thanks, Dustin

From: Horter, Josef [mailto:jhorter@baileywyant.com]
Sent: Friday, January 26, 2018 1:51 PM
To: Dustin Deane <dustin.deane@bluestoneenergygroup.com>
Subject: RE: Re Virginia Drilling matter

Dustin,

Have you had a chance to review the agreement? My client would like to get these payments underway. Thanks.

Joe

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Sent: Thursday, January 11, 2018 3:34 PM
To: Horter, Josef <jhorter@baileywyant.com>
Cc: Virlo Stiltner <Virlo@vadrillco.com>
Subject: RE: Re Virginia Drilling matter

Joe, thanks for the email. I will review and get back to you.

Regards, Dustin

From: Horter, Josef [mailto:jhorter@baileywyant.com]
Sent: Wednesday, January 10, 2018 10:30 AM
To: Dustin Deane <dustin.deane@bluestoneenergygroup.com>
Cc: Virlo Stiltner <Virlo@vadrillco.com>
Subject: RE: Re Virginia Drilling matter

Horter, Josef

From: Horter, Josef
Sent: Thursday, March 15, 2018 11:20 AM
To: Steve Ball
Subject: FW: Re Virginia Drilling matter
Attachments: VADCO-Justice Agreement-163347.pdf; AMORTIZATION SCHEDULE FOR SETTLEMENT PAYMENT-163365.pdf

SentFromSession: HORTER-8200jhorter.3/15/2018 9:06:33 AM

Mr. Ball,

The first payment by your companies is due today yet I have not heard back from you or received a signed copy of the agreement. Please forward payment to my client as set forth in the settlement agreement. Thanks.

Joe

Josef A. Horter, Attorney
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
Charleston, WV 25301
T: 304.720.0737 | F: 304.343.3133

From: Horter, Josef
Sent: Thursday, March 01, 2018 9:15 AM
To: 'Steve Ball' <steve.ball@bluestoneindustries.com>
Cc: 'Dustin Deane' <dustin.deane@bluestoneenergygroup.com>
Subject: FW: Re Virginia Drilling matter

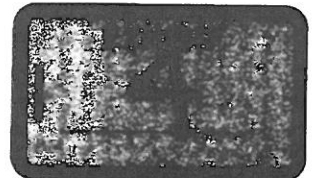
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Joe

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From: Horter, Josef
Sent: Thursday, February 22, 2018 3:22 PM
To: 'Dustin Deane' <dustin.deane@bluestoneenergygroup.com>
Cc: Steve Ball <steve.ball@bluestoneindustries.com>
Subject: RE: Re Virginia Drilling matter



Attached please find the agreement modified to reflect payments beginning March 15, and a new amortization schedule.

Joe

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To: Dustin Deane <dustin.deane@bluestoneenergygroup.com>
Cc: Virlo Stiltner <Virlo@vadrillco.com>
Subject: RE: Re Virginia Drilling matter

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500 Virginia Street, East, Suite 600
Charleston, WV 25301
T: 304.720.0737 | F: 304.343.3133

From: Dustin Deane [mailto:dustin.deane@bluestoneenergygroup.com]
Sent: Thursday, November 09, 2017 10:08 AM
To: Horter, Josef <jhorter@baileywyant.com>
Subject: RE: Re Virginia Drilling matter

Joe:

Yes I have – management is not inclined to agree to the confession of judgment.

Thanks, Dustin

From: Horter, Josef [mailto:jhorter@baileywyant.com]
Sent: Thursday, November 09, 2017 9:53 AM
To: Dustin Deane <dustin.deane@bluestoneenergygroup.com>
Subject: RE: Re Virginia Drilling matter

Dustin,

Have you gotten an answer regarding this request? Thanks.

Joe

Josef A. Horter, Attorney
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
Charleston, WV 25301
T: 304.720.0737 | F: 304.343.3133

From: Dustin Deane [mailto:dustin.deane@bluestoneenergygroup.com]
Sent: Thursday, November 02, 2017 10:25 AM

To: Horter, Josef <jhorter@baileywyant.com>
Subject: RE: Re Virginia Drilling matter

Joe:

I'll have to check with management but I'd imagine that would be agreeable if there is a good right to notice and cure provision in the agreement.

Will run it up the flag pole and get back to you.

Thanks, Dustin

From: Horter, Josef [mailto:jhorter@baileywyant.com]
Sent: Thursday, November 02, 2017 10:22 AM
To: Dustin Deane <dustin.deane@bluestoneenergygroup.com>
Subject: RE: Re Virginia Drilling matter

Dustin,

Thanks for the email. I called and left message with you a week or so ago. My client has asked if your will confess judgment to be filed in the event of no payment. They ask this so they don't have to go through the time and expense of re-filing suit. Let me know. Thanks.

Joe

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Michael B. Hissam :: Lawyer :: Bailey & Glasser LLP :: 304.345.6555

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BAILEY GLASSER LLP

209 Capitol Street
Charleston, WV 25301
Tel: 304.345.6555
Toll Free: 877.852.0342
Fax: 304.342.1110

Michael Hissam
mhissam@baileyglasser.com

April 17, 2018

Josef A. Horter
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
PO Box 3710
Charleston, WV 25337

Re: *Virginia Drilling Company, LLC v. Bluestone Industries, Inc.*,
No. 17-C-1129 (Cir. Ct. Kanawha Cnty.)

Dear Mr. Horter:

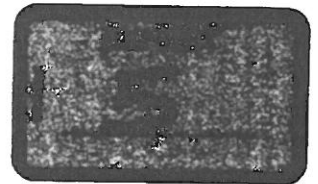
This letter is in response to your letter dated April 13, 2018. Our representation of the Justice entities has terminated, so unfortunately, we cannot be of any assistance to you in this matter. I would recommend that you attempt to contact in-house counsel Steve Ball for further assistance.

Sincerely,



Michael Hissam

MBH/md



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